

## B. WHAT RECORDS CAN BE REQUESTED UNDER THE FOIA?

The FOIA requires agencies to publish in the *Federal Register*—thereby, under the Government Printing Office Electronic Information Access Enhancement Act of 1993, 18

**[Footnote]** making such information available online--(1) descriptions of agency organization and office addresses; (2) statements of the general course and method of agency operation; (3) rules of procedure and descriptions of forms; and (4) substantive rules of general applicability and general policy statements. The act also requires agencies to make available for public inspection and copying: (1) final opinions made in the adjudication of cases; (2) statements of policy and interpretations adopted by an agency, but not published in the *Federal Register*; (3) administrative staff manuals that affect the public; (4) copies of records released in response to FOIA requests that an agency determines have been or will likely be the subject of additional requests; and (5) a general index of released records determined to have been or likely to be the subject of additional requests. 19

**[Footnote]** The 1996 FOIA amendments require that these materials which an agency must make available for inspection and copying without the formality of a FOIA request and which are created on or after November 1, 1996, must be made available by computer telecommunications and in hard copy. 20

**[Footnote]**

**[Footnote 18:** 44 U.S.C. Sec. 4101 (1993); the Government Printing Office Access website may be accessed at <http://www.access.gpo.gov/su--docs/aces/aaces001.html>.]

**[Footnote 19:** The 1996 amendments to the FOIA require that, by December 31, 1999, this general index should be made available by computer telecommunications. Since not all individuals have access to computer networks or are near agency public reading rooms, requesters would still be able to access previously released FOIA records through the normal FOIA process. 110 Stat. 3048.]

**[Footnote 20:** 110 Stat. 3048; the 1996 FOIA amendments were signed into law by the President on October 2, 1996.]

All other ‘records’ of a Federal agency may be requested under the FOIA. The form in which a record is maintained by an agency does not affect its availability. A request may seek a printed or typed document, tape recording, map, photograph, computer printout, computer tape or disk, or a similar item. The 1996 FOIA amendments affirm the general policy that any record, regardless of the form in which it is stored, that is in the possession and control of a Federal agency is usually considered to be an agency record under the FOIA. Although the FOIA occasionally uses terms other than ‘record,’ including ‘information’ and ‘matter,’ the definition of ‘record’ made by the 1996 amendments should leave no doubt about the breadth of the policy or the interchangeability of terms.

Of course, not all records that can be requested under the FOIA must be disclosed. Information that is exempt from disclosure is described below in the section entitled ‘Reasons Access May Be Denied Under the FOIA.’

The FOIA, it should be noted, provides that a requester may ask for *records* rather than information. This means that an agency is only required to look for an existing record or document in response to a FOIA request. An agency is not obliged to create a new record to comply with a request. An agency is neither required to collect information it does not have, nor must an agency do research or analyze data for a requester. 21

**[Footnote]**

**[Footnote 21:** When records are maintained in a computer, an agency is required to retrieve information in response to a FOIA request. The process of retrieving the information may result in the creation of a new document when the data is printed out on paper or written on computer tape or disk. Since this may be the only way computerized data can be disclosed, agencies are required to provide the data even if it means a new document must be created.]

Requesters must ask for existing records. Requests may have to be carefully written in order to obtain the desired information. Sometimes, an agency will help a requester identify a specific document that contains the information being sought. Other times, a requester may need to be creative when writing a FOIA request in order to identify an existing document or set of documents containing the desired information.

There is a second general limitation on FOIA requests. The law requires that each request must *reasonably describe* the records being sought. This means that a request must be specific enough to permit a professional employee of the agency who is familiar with the subject matter to locate the record in a reasonable period of time.

Because agencies organize and index records in different ways, one agency may consider a request to be reasonably descriptive while another agency may reject a similar request as too vague. For example, the Federal Bureau of Investigation (FBI) has a central index for its primary record system. As a result, the FBI is able to search for records about a specific person. However, agencies that do not maintain a central name index may be unable to conduct the same type of search. These agencies may reject a similar request because the request does not describe records that can be identified.

Requesters should make requests as specific as possible. If a particular document is required, it should be identified precisely, preferably by date and title. However, a request does *not* always have to be that specific. A requester who cannot identify a specific record should clearly explain his or her needs. A requester should make sure, however, that a request is broad enough to include all desired information.

For example, assume that a requester wants to obtain a list of toxic waste sites near his home. A request to the Environmental Protection Agency (EPA) for all records on toxic waste would cover many more records than are needed. The fees for such a request might be very high, and it is possible that the request might be rejected as too vague.

A request for all toxic waste sites within 3 miles of a particular address is very specific. However, it is unlikely that the EPA would have an existing record containing data organized in that fashion. As a result, the request might be denied because there is no existing record containing the information.

The requester might do better to ask for a list of toxic waste sites in his city, county, or State. It is more likely that existing records might contain this information. The requester might also want to tell the agency in the request letter exactly what information is desired. This additional explanation may help the agency to find a record that meets the request.

Many people include their telephone number with their requests. Some questions about the scope of a request can be resolved quickly when an agency employee and the requester talk. This is an efficient way to resolve questions that arise during the processing of FOIA requests.

It is to everyone's advantage if requests are as precise and as narrow as possible. The requester benefits because the request can be processed faster and cheaper. The agency benefits because it can do a better job of responding to the request. The agency will also be able to use its resources to respond to more requests. The FOIA works best when both the requester and the agency act cooperatively.